



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR-DR, OPRM-DR, FF

### Introduction

This hearing convened as a result of the landlord's application for dispute resolution under the Residential Tenancy Act (Act) for:

- an order of possession of the rental unit pursuant to a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (Notice) issued by the landlord;
- a monetary order for unpaid rent; and
- to recover the cost of the filing fee.

This dispute began as an application via the ex-parte Direct Request process and was adjourned to a participatory hearing based on the Interim Decision by an arbitrator with the Residential Tenancy Branch (RTB), dated May 7, 2021, which should be read in conjunction with this decision.

At the participatory hearing, the landlord's agent (landlord) attended the teleconference hearing. The tenant did not attend the hearing. For this reason, service of the Notice of a Dispute Resolution Hearing (Notice of Hearing), application and documentary evidence was considered.

The landlord testified that the tenant was served the Notice of Reconvened Hearing, the interim decision, and all other required documents by registered mail on May 16, 2021. The landlord provided documentary evidence showing the tenant signing that she received the above documents.

Based on the landlord's undisputed testimony and evidence, I accept that the tenant was sufficiently served under the Act and the hearing proceeded in the tenant's absence. The landlord gave affirmed testimony that he was not recording the hearing.

During the hearing the landlord was given the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

Issue(s) to be Decided

Is the landlord entitled to an order of possession of the rental unit due to unpaid monthly rent, to monetary compensation for unpaid rent, and to recover the cost of the filing fee?

Background and Evidence

The written tenancy agreement filed by the landlord shows that this tenancy began on December 19, 2019, monthly rent payable by the tenant is \$2,700, due on the 1<sup>st</sup> day of the month, and a security deposit of \$1,350 was paid by the tenant at the beginning of the tenancy.

The landlord submitted a tenancy agreement amendment, dated February 20, 2020, showing that the parties agreed the tenant could make the monthly rent payments by paying \$1,350 on the first day of the month and \$1,350 on the 15<sup>th</sup> day of the month.

The landlord submitted that on February 22, 2021, the tenant was served with the Notice, by personal service, listing unpaid rent of \$6,000 as of February 15, 2021. The effective vacancy date listed on the Notice was March 5, 2021. Filed in evidence was a copy of the Notice and proof of delivery of the Notice.

The landlord stated that the tenant has not vacated the rental unit and did not pay the amount listed on the Notice within 5 days. In addition, although the tenant has made a rent payment since the Notice was issued, they have not paid the full amount owing. The landlord filed an amendment to their original application, increasing their monetary claim, which was served by personal service on the tenant on August 25, 2021.

The landlord testified that the tenant made a payment of \$8,000 on August 25, 2021.

The landlord submitted that as of the day of the hearing, the tenant owed an outstanding monthly rent balance of \$7,550.

### Analysis

After reviewing the relevant evidence, I provide the following findings, based upon a balance of probabilities:

### Order of Possession-

Under section 26 of the Act, a tenant is required to pay rent in accordance with the terms of the tenancy agreement and is not permitted to withhold rent without the legal right to do so. When a tenant fails to pay rent pursuant to the terms of the tenancy agreement, the landlord may serve the tenant a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, as here.

The Notice set out for the benefit of the tenant that the Notice would be cancelled if the rent was paid within five (5) days. The Notice also explained that alternatively the tenant had five days to dispute the Notice by making an application for dispute resolution. I have no evidence before me that the tenant applied to dispute the Notice.

I find the landlord submitted sufficient, unopposed evidence to prove that the tenant was served the Notice, owed the rent listed, did not pay the outstanding rent, or file an application for dispute resolution in dispute of the Notice within five days of service.

I find the tenant is conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice, in this case, March 5, 2021.

As a result, I order the tenancy ended on March 5, 2021, and grant the landlord an order of possession of the rental unit pursuant to section 55(2) of the Act, effective **two days** after service of the order upon the tenant.

Should the tenant fail to vacate the rental unit pursuant to the terms of the order after being served, the order may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court.

The tenant is advised that costs of such enforcement, **such as bailiff fees**, are subject to recovery from the tenant.

Monetary claim-

I find it reasonable that the landlord be allowed to amend their monetary claim in their application, to account for further unpaid rent as the tenant has yet to vacate the rental unit. Further, the landlord submitted an amended application for dispute resolution, increasing their monetary claim, which I find was personally served to the tenant.

I find that the landlord submitted sufficient, unopposed evidence to prove that the tenant owes the amount of unpaid rent of **\$7,550**, due under the tenancy agreement, as of the date of the hearing.

I grant the landlord recovery of their filing fee of **\$100**, due to their successful application.

I find the landlord has established a monetary claim of **\$7,650**, for the unpaid monthly rent and the filing fee, as noted above. I grant the landlord a monetary order pursuant to section 67 of the Act for the amount of **\$7,650**.

Should the tenant fail to pay the landlord this amount without delay after being served the order, the monetary order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court. The tenant is cautioned that costs of such enforcement are subject to recovery from the tenant.

Conclusion

The landlord's application for an order of possession of the rental unit and a monetary order for unpaid rent has been granted in the above terms.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*. Pursuant to section 77 of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: September 9, 2021

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Residential Tenancy Branch